

JUN 20 2008

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR 5968

DATE COMPLAINT FILED: 1/24/08

DATE OF NOTIFICATION: 1/31/08

LAST RESPONSE RECEIVED: 3/17/08

DATE ACTIVATED: 3/20/08

EXPIRATION OF SOL: 5/31/12

COMPLAINANT:

Maria Weeg, Arizona Democratic Party

RESPONDENTS:

John Shadegg's Friends and
Ian A. Macpherson, in his official capacity as treasurer
Leadership for America's Future PAC and
Keith A. Davis, in his official capacity as treasurer¹
John Dawson
David S. Van Denburgh

RELEVANT STATUTES:

2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(a)(2)(A)
2 U.S.C. § 441a(a)(4)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 441f
11 C.F.R. § 100.5(g)(5)
11 C.F.R. § 103.3(b)
11 C.F.R. § 110.1(b)
11 C.F.R. § 110.1(h)
11 C.F.R. § 110.2(b)
11 C.F.R. § 110.4(b)
11 C.F.R. § 110.9

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

¹ On March 6, 2008, Leadership for America's Future PAC filed an amended Statement of Organization in which Keith Davis replaced Ian A. Macpherson, the treasurer. Commission records show that Mr. Macpherson was the treasurer and Mr. Davis was an assistant treasurer of the PAC at the time of the activity described in this report.

I. INTRODUCTION

This matter pertains to \$5,000 contributions that John Dawson and David S. Van Denburgh each made to Leadership for America's Future PAC ("LEAD PAC"), a nonconnected "leadership" PAC controlled by Congressman John Shadegg, and LEAD PAC's use of these funds to contribute \$10,000 (primary and general election) to Shadegg's re-election campaign committee, John Shadegg's Friends ("Shadegg Committee").

The complaint alleges that Dawson and Van Denburgh, who already had made the maximum legal contributions to the Shadegg Committee, made excessive contributions to the Shadegg Committee in the name of LEAD PAC, in violation of 11 C.F.R. §§ 110.1(h) and 110.4(b), *see* 11 C.F.R. § 110.1(b) and 2 U.S.C. §§ 441a and 441f; that the Shadegg Committee and its treasurer failed to timely refund the contributions in violation of 11 C.F.R. § 103.3(b), *see* 2 U.S.C. § 441a(f); and that LEAD PAC's solicitation and administrative expenses constituted excessive in-kind contributions to the Shadegg Committee. Respondents all deny the allegations. They assert that Dawson and Van Denburgh's \$5,000 contributions to LEAD PAC should not be aggregated with their prior contributions to Shadegg's campaign committee, that the contributions were not made in the name of another, and that LEAD PAC was a bona fide multicandidate committee that supported multiple candidates during both the 2006 and 2008 election cycles.

Based on the information discussed below, we recommend that the Commission find no reason to believe respondents violated 2 U.S.C. §§ 441a or 441f; and 11 C.F.R. §§ 103.3(b), 110.1(b), 110.1(h), or 110.4(b), and close the file in this matter.

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II. FACTUAL AND LEGAL ANALYSIS

A. Background

John Shadegg, a seven-term Congressman, is currently a candidate for re-election in Arizona's 3rd Congressional District. In addition to his registered principal campaign committee, Congressman Shadegg controls LEAD PAC, a nonconnected "leadership" PAC, which is registered with the Commission as a qualified multicandidate committee. *See* 2 U.S.C. § 441a(a)(4)(A).

LEAD PAC registered with the Commission as a nonconnected committee on January 21, 1999 and notified the Commission of achieving multicandidate status on May 15, 2005. During the 2006 election cycle, LEAD PAC made over 100 contributions to over 60 federal candidates and the National Republican Congressional Committee ("NRCC"). During the current election cycle, LEAD PAC made the two previously mentioned \$5,000 contributions to the Shadegg Committee, a \$5,000 contribution to John McCain's Presidential campaign committee, and three contributions totaling \$7,000 to House candidate Timothy Bee's campaign committee (for the primary and general election).

LEAD PAC's only receipts during the reporting period in which it made its two \$5,000 contributions to the Shadegg Committee were two \$5,000 contributions received on June 15, 2007, one from John Dawson and one from David S. Van Denburgh. Dawson and Van Denburgh had previously each made two \$2,300 contributions (for the primary and the general elections) to the Shadegg Committee on May 31, 2007 and June 2, 2007, respectively, for an aggregate total of \$4,600 each. Approximately two weeks later, on June 26, 2007, LEAD PAC made the two \$5,000 contributions to the Shadegg Committee (for the primary and general

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1 elections).² The Shadegg Committee refunded the two \$5,000 contributions on January 23,
2 2008, the same date as the complaint in this matter.

3 LEAD PAC, the Shadegg Committee, and Macpherson, as treasurer, submitted a joint
4 response to the complaint that included affidavits from Dawson, Shadegg, and Macpherson,
5 while Van Denburgh submitted a separate response. Shadegg's affidavit states that he met
6 separately with Dawson and Van Denburgh on or about May 29 and 31, 2007 to solicit
7 contributions to both the Shadegg Committee and LEAD PAC. See Shadegg Affidavit. The
8 Congressman claims that he told both donors the contributions to LEAD PAC were being
9 solicited to help elect a Republican majority to Congress and that he did not tell them that the
10 funds he solicited for LEAD PAC would be used to support his own candidacy. *Id.* Both
11 Dawson and Van Denburgh submitted affidavits which corroborate Shadegg's account, and each
12 states that he did not know that his LEAD PAC contribution would be used to support the
13 Shadegg Committee. See Dawson and Van Denburgh Affidavits. Shadegg also states that he
14 authorized LEAD PAC to make the two \$5,000 contributions to his own campaign committee on
15 or about June 26, 2007.

16 **B. Analysis**

17 **1. Excessive Contributions and Contributions in Name of Another**

18 Complainant alleges that Dawson and Van Denburgh each made a \$5,000 excessive
19 contribution to the Shadegg Committee in violation of 11 C.F.R. §§ 110.1(b) and 110.1(h), see
20 2 U.S.C. § 441a, and a contribution in the name of LEAD PAC in violation of 11 C.F.R.
21 § 110.4(b), see 2 U.S.C. § 441f. Complainant also alleges that the Shadegg Committee and Ian

² Disclosure reports show that LEAD PAC had \$2,975 cash on hand at the beginning of the reporting period and total receipts of \$10,000 during the period. LEAD PAC was left with \$2,066 cash on hand at the end of the reporting period, after making the contributions and paying its accountant.

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1 A. Macpherson, its treasurer, should have investigated and refunded the questionable \$5,000
2 contributions within 30 days of receipt. *See* 11 C.F.R. § 103.3(b) and 2 U.S.C. § 441a(f).

3 The Act limits an individual's contributions to a candidate or his authorized committee to
4 an aggregate of \$2,300 per election for the 2008 election cycle. 2 U.S.C. § 441a(a)(1)(A) and
5 11 C.F.R. § 110.1(b)(1). Contributions to a multicandidate committee are limited to \$5,000 per
6 election during the cycle. 2 U.S.C. § 441a(a)(1)(C) and 11 C.F.R. § 110.1(d). A multicandidate
7 committee in turn is similarly limited to contributing an aggregate of \$5,000 per election to a
8 candidate or his authorized committee.³ 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 110.2(b)(1).
9 In order to prevent circumvention of these limits, as well as to insure disclosure, the Act also
10 prohibits contributions made in the name of another. *See* 2 U.S.C. § 441f and 11 C.F.R.
11 § 110.4(b).

12 An individual may contribute to a candidate or the candidate's authorized committee with
13 respect to a particular election and also contribute to a political committee which has supported,
14 or anticipates supporting, the same candidate in the same election without aggregation, as long as
15 (1) the political committee is not the candidate's principal campaign committee or other
16 authorized political committee or a single candidate committee; (2) the contributor does not give
17 with the knowledge that a substantial portion will be contributed to, or expended on behalf of,
18 that candidate for the same election; and (3) the contributor does not retain control over the
19 funds. 11 C.F.R. § 110.1(h)(1)-(3).

20 Significantly, there is no allegation or information indicating that Dawson or Van
21 Denburg retained control over the funds after they made the contributions to LEAD PAC. *See*

³ The Commission has determined that a candidate's "leadership" PAC is not affiliated with the candidate's authorized committee, and therefore each committee has separate contribution limits. *See* 11 C.F.R. § 100.5(g)(4) and *Explanation and Justification for Regulations on Leadership PACs*, 68 Fed. Reg. 67013 (December 1, 2003).

11 C.F.R. § 110.1(h)(3). Therefore, the contributions could only be aggregated, and thus considered excessive, if they had actual knowledge that LEAD PAC would use their respective \$5,000 LEAD PAC contributions to contribute to the Shadegg Committee.

The Commission has specifically recognized that “[a]lthough a contributor might reasonably infer from the solicitation as a whole that some portion of his or her contribution [to a PAC] might be used to support [the candidate], such an inference alone does not suggest that the [contributor] had ‘actual knowledge’” as to how their funds would be used.⁴ MUR 5881 (Citizens Club for Growth), Factual and Legal Analysis approved on August 8, 2007 at 9. *See* MUR 5732 (Matt Brown for U.S. Senate), Factual and Legal Analysis approved on March 20, 2007 at 11 (federal candidate’s solicitation of contributions to state party committees did not give donors actual knowledge that the state party committees would use the funds to support that candidate); MUR 5445 (Quentin Nesbitt), First General Counsel’s Report dated February 2, 2005 at 11-12 and Commission Certification dated February 8, 2005 (donor’s admitted recognition that it was likely that “leadership” PACs would support a candidate based on the PACs’ contribution histories did not constitute actual knowledge). *See also* MUR 5019 (Keystone Federal PAC), First General Counsel’s Report dated February 5, 2001 at 27-28 and Commission Certification dated March 7, 2001) (although contributors were likely aware that the PAC would contribute to the candidates’ committees, it does not appear the contributors knew that a portion of *their own contributions* would be given to a specific candidate) (italics in original).

⁴ In one case where the Commission found probable cause to believe that excessive contributions were made and received under section 110.1(h)(2) of its regulations, the contributors had contact with an intermediary who in effect advised them that the PACs receiving their contributions would be using their funds to support a specific federal candidate. *See* MURs 4568, 4633, 4634 (Triad Management Services, Inc.).

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1 Respondents all deny that Dawson or Van Denburgh had knowledge that their \$5,000
2 contributions to LEAD PAC would be used to fund contributions to the Shadegg Committee.⁵
3 See Affidavits attached to Responses. Shadegg, who solicited the contributions from Dawson
4 and Van Denburgh, declares in his affidavit that he never told Dawson or Van Denburgh that the
5 LEAD PAC contributions would be used to contribute to his campaign committee, nor did he tell
6 them of his subsequent decision to authorize LEAD PAC to make the two \$5,000 contributions
7 to the Shadegg Committee. Both Dawson and Van Denburgh corroborate Shadegg's account in
8 their affidavits and deny any knowledge that their LEAD PAC contributions would be used to
9 support the Shadegg Committee. Therefore, it does not appear that Dawson or Van Denburg's
10 \$5,000 contributions to LEAD PAC should be aggregated with their contributions to the Shadegg
11 Committee or were excessive contributions to that committee.

12 Similarly, the available information does not support complainant's allegation that
13 Dawson and Van Denburg used LEAD PAC's name to make alleged \$5,000 excessive
14 contributions to the Shadegg Committee in violation of 11 C.F.R. § 110.4(b) or 2 U.S.C. § 441f.
15 As discussed above, there is no basis on which to conclude that Dawson or Van Denburgh knew
16 that the funds they contributed to LEAD PAC would be used to support the Shadegg Committee,
17 and thus no basis on which to conclude that they made a contribution in the name of another.
18 See 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b).

19 Therefore, we recommend that the Commission find no reason to believe that John
20 Dawson and David S. Van Denburgh violated 2 U.S.C. § 441a or 11 C.F.R. § 110.1(b)(1) by

⁵ In their joint response, the committees emphasize that in MUR 5881 (Citizens Club for Growth) the Commission concluded that an inference that some or all of an individual's contribution to a PAC might be used to support a related candidate's authorized committee by itself does not satisfy the regulations' knowledge requirement. They also note that the Commission came to a similar conclusion in MURs 5732 (Matt Brown for U.S. Senate) and 5445 (Quentin Nesbitt).

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1 making excessive contributions, and find no reason to believe that the Shadegg Committee and
2 Ian A. Macpherson, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f) or 11 C.F.R.
3 § 110.9 by accepting excessive contributions. We also recommend that the Commission find no
4 reason to believe that John Dawson and David S. Van Denburgh, LEAD PAC and Keith Davis,
5 in his official capacity as treasurer, or the Shadegg Committee and Ian A. Macpherson, in his
6 official capacity as treasurer, violated 2 U.S.C. § 441f or 11 C.F.R. § 110.4(b) by making,
7 allowing their names to be used, or by accepting, contributions made in the name of another.

8 Complainant further alleges that the Shadegg Committee and Ian A. Macpherson, its
9 treasurer, should have investigated and refunded the questionable \$5,000 contributions within 30
10 days of receipt. See 11 C.F.R. § 103.3(b). Macpherson asserts that there were no unresolved
11 questions of illegality that would compel him or the Shadegg Committee to refund the
12 contributions.⁶ Despite LEAD PAC's association with Congressman Shadegg, it is not affiliated
13 with the Shadegg Committee under the Act and Commission's regulations at 11 C.F.R.
14 § 100.5(g)(5), see footnote 3 *supra*, and the two committees have separate contribution limits.
15 Both Dawson and Van Denburgh's individual contributions to the Shadegg Committee and to
16 LEAD PAC were within the contribution limits and do not appear to have been questionable
17 when they were made, as complainant asserts. Therefore, it does not appear that Macpherson,
18 then treasurer of both the Shadegg Committee and LEAD PAC, violated any provision of the Act
19 or Commission's regulations by failing to refund the two \$5,000 contributions at issue.
20 Accordingly, we recommend that the Commission find no reason to believe that the Shadegg

⁶ Notwithstanding its position that it was under no obligation to do so, the Shadegg Committee refunded the two \$5,000 contributions it received from LEAD PAC on January 23, 2008, the same date as the complaint in this matter.

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1 Committee and Ian A. Macpherson, in his official capacity as treasurer, violated 2 U.S.C.
2 § 441a(f) or 11 C.F.R. § 103.3(b).

3 **2. In-Kind Contributions**

4 Finally, Complainant alleges that LEAD PAC's solicitation and administrative expenses
5 constitute in-kind contributions to the Shadegg Committee because LEAD PAC does not appear
6 to have supported the variety of candidates in 2007 that is expected of a multicandidate
7 committee. The basis for this allegation is that LEAD PAC supported only one candidate
8 (Shadegg) during the first half of 2007. However, as discussed above, LEAD PAC made
9 contributions to other federal candidates (John McCain and Timothy Bee) during the second half
10 of 2007. In addition, LEAD PAC had already qualified for multicandidate status in 2005, and it
11 has made over 100 contributions to over 60 federal candidates and the NRCC during the 2006
12 election cycle. Therefore, as LEAD PAC is a qualified multicandidate committee and does not
13 appear to operate solely to support Shadegg's candidacy, as complainant alleges, LEAD PAC's
14 solicitation and administrative expenses do not constitute in-kind contributions to the Shadegg
15 Committee.⁷ Accordingly, we recommend that the Commission find no reason to believe that
16 LEAD PAC and Keith Davis, in his official capacity as treasurer, violated 2 U.S.C. § 441a, and
17 no reason to believe the Shadegg Committee and Ian A. Macpherson, in his official capacity as
18 treasurer, violated 2 U.S.C. § 441a(f).

⁷ To the extent that complainant implicitly asserts that LEAD PAC must re-qualify for multicandidate status in each election cycle, the Commission's regulations do not require any such requalification. See 11 C.F.R. § 102.2(a)(3) and *Explanation and Justification for Regulations on Multicandidate Committees and Biennial Contribution Limits*, 68 Fed. Reg. 65412, 65413-14.

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III. RECOMMENDATIONS

1. Find no reason to believe David S. Van Denburgh violated 2 U.S.C. §§ 441a, 441f, and 11 C.F.R. §§ 110.1(b) and 110.4(b).
2. Find no reason to believe John Dawson violated 2 U.S.C. §§ 441a, 441f, and 11 C.F.R. §§ 110.1(b) and 110.4(b).
3. Find no reason to believe Leadership for America's Future PAC and Keith A. Davis, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a, 441f, and 11 C.F.R. §§ 110.2(b) and 110.4(b).
4. Find no reason to believe John Shadegg's Friends and Ian A. Macpherson, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f), 441f, and 11 C.F.R. §§ 103.3(b), 110.9, and 110.4(b).
5. Close the file.
6. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

6-19-08
Date

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